



## **OFFICE OF MANAGEMENT AND BUDGET**

### **The Interagency Council on Statistical Policy's Recommendation for a Standard Application Process (SAP) for Requesting access to Certain Confidential Data Assets**

**AGENCY:** Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of solicitation of comments.

**SUMMARY:** As part of the implementation of the Foundations for Evidence-Based Policymaking Act of 2018, the Office of Management and Budget (OMB) requests comments on the Interagency Council on Statistical Policy's recommendation for a Standard Application Process (SAP) for requesting access to certain confidential data assets. The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets accessed or acquired by a statistical agency or unit for the purposes of developing evidence. This new process would be implemented while maintaining stringent controls to protect confidentiality and privacy, as required by the law.

**DATES:** To ensure consideration of comments on this Notice, comments must be provided in writing no later than 60 days from the publication date of this notice. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to send comments electronically (see **ADDRESSES**, below).

**ADDRESSES:** Comments may be sent via *www.regulations.gov*—a Federal E-Government website that allows the public to find, review, and submit comments on documents that agencies have published in the Federal Register and that are open for comment. Simply type “OMB-2022-0001” (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Comments submitted in response to this notice may be made available to the public and are subject to disclosure under the Freedom of Information Act. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket; however, *www.regulations.gov* does include the option of commenting anonymously.

Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

*Electronic Availability:* **Federal Register** notices are available electronically at *www.federalregister.gov/*.

**FOR FURTHER INFORMATION CONTACT:** For information about this request for comments, contact Rochelle Martinez, OMB, [Statistical\\_Directives@omb.eop.gov](mailto:Statistical_Directives@omb.eop.gov), 9242 New Executive Office Building, 725 17th St. NW, Washington, DC 20503, telephone (202) 395-5897.

**SUPPLEMENTARY INFORMATION:** OMB is issuing a request for comment under the *Foundations for Evidence-Based Policymaking Act of 2018*, Pub. L. No. 115-435, 132 stat. 5529 (2019), hereafter referred to as the Evidence Act.

Specifically, the Evidence Act requires OMB to establish a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply for access to confidential data assets accessed or acquired by a statistical agency or unit.<sup>1</sup> This new process would be implemented while maintaining stringent controls to protect confidentiality and privacy, as required by the law. In addition, under the *Paperwork Reduction Act*, the Interagency Council on Statistical Policy (ICSP) is to advise and assist the Director of OMB in coordinating the Federal statistical system and setting statistical policy.<sup>2</sup> The ICSP is chaired by the Chief Statistician of the United States and membership includes the heads of the 13 recognized statistical agencies, or in the case of an agency that does not have a statistical agency or unit, the agency's Statistical Official.<sup>3</sup>

In that capacity, and in order for the statistical system to comply with this Evidence Act requirement, the ICSP submitted a set of recommendations to OMB for a policy that would establish a standard application process (SAP) for requesting access to certain confidential data assets accessed or acquired by designated statistical agencies and units.

OMB's Office of the Chief Statistician, within the Office of Information and Regulatory Affairs (OIRA), relies on public comment and subject matter expertise across the Federal government when establishing OMB policies or guidance for

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<sup>1</sup> 44 U.S.C. 3583(a). "Statistical agencies or units" are those agencies or organizational units designated by the Director of OMB pursuant to 44 U.S.C. 3562(a).

<sup>2</sup> 44 U.S.C. 3504(e).

<sup>3</sup> 5 U.S.C. 314.

efficient coordination of Federal statistics. Accordingly, OMB is seeking public comment on the ICSP's recommendations.

### **Applicability**

The proposed policy would impose requirements on all recognized statistical agencies and units under 44 U.S.C. 3561(11) and 3562. As a result, all persons seeking access to data under U.S.C. 3583 would apply for such access under the requirements of this policy. At the time of this proposal, there are sixteen designated statistical agencies and units: Bureau of Economic Analysis (Department of Commerce); Bureau of Justice Statistics (Department of Justice); Bureau of Labor Statistics (Department of Labor); Bureau of Transportation Statistics (Department of Transportation); Census Bureau (Department of Commerce); Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration (Department of Health and Human Services); Economic Research Service (Department of Agriculture); Energy Information Administration (Department of Energy); Microeconomic Surveys Unit (Board of Directors of the Federal Reserve System); National Agricultural Statistical Service (Department of Agriculture); National Animal Health Monitoring System, Animal and Plant Health Inspection Service (Department of Agriculture); National Center for Education Statistics (Department of Education); National Center for Health Statistics (Department of Health and Human Services); National Center for Science and Engineering Statistics (National Science Foundation); Office of Research, Evaluation, and Statistics (Social Security Administration); and Statistics of Income Division (Department of the Treasury).

In the future, if the Director of OMB recognizes an agency or organizational unit as a statistical agency or unit, then it would become subject to this policy and shall adopt the SAP.

Under the proposal, other Executive branch agencies or organizational units may, at their discretion, and with the concurrence of the SAP Governance Body, utilize the SAP to accept applications for access to confidential data for the purpose of developing evidence. Agencies facilitate access to confidential data by enabling applicants to submit proposals through the SAP. When making use of the SAP to accept such proposals, it is proposed that an Agency must adopt and abide by the entirety of this policy for those data assets, including use of the data inventory, common application, review criteria, timelines, appeals process, progress tracking, and reporting, with appropriate exceptions for legal and regulatory requirements as allowed for in the proposed policy.

## **Background**

Data accessed or acquired by statistical agencies and units is vital for developing evidence on conditions, characteristics, and behaviors of the public and on the operations and outcomes of public programs and policies. This evidence can benefit the stakeholders in the programs, the broader public, and policymakers and program managers at the local, State, Tribal, and National levels. Some evidence may be built upon public versions of data that were initially collected under a statistical confidentiality protection statute, but where some type of disclosure limitation methods have been applied, such as the removal of Personal Identifying Information (PII) and aggregation of information, to prevent the risk of disclosing the identities of individuals. However, some evidence-building activities have long required or benefited greatly from the use of properly and

strongly protected confidential data. Such uses are conducted in a manner that maintains the confidentiality of the data and the public trust.

Again, these arrangements have long been established by contract or by entering into a special agreement, where a statistical agency or unit may allow approved individuals (hereafter, referred to as agents) to perform exclusively statistical activities on an approved project using confidential data, subject to appropriate control, supervision, and agreement to comply with all relevant legal provisions. CIPSEA authorizes data accessed or acquired by a statistical agency or unit under a pledge of confidentiality to be shared with such agents, and subjects such agents to the same fines and penalties, including potential criminal penalties, for willful and unauthorized disclosures as statistical agency or unit employees and officers. Such arrangements have been used successfully even prior to CIPSEA's enactment in 2002 for the purpose of facilitating the generation of evidence.

However, the process for an individual to become a designated agent authorized to access a confidential data asset for an approved statistical activity often varies across Federal statistical agencies. Moreover, the trusted status that agents obtain from one agency may not transfer to another agency, requiring the potential duplication of costly and time-consuming clearance processes. The variety of applications and clearance procedures used across the Federal statistical system for confidential data access potentially impacts the ability of agents to generate evidence that could inform the efficiency of government policies and programs, as well as the availability of evidence to inform non-Federal decision making. Evidence building opportunities would be enhanced, while maintaining data protections and ensuring appropriate use, by the design and construction of a standard application process (SAP) for access to confidential data.

Recognizing this potential, in 2016, the U.S. Congress established the Commission on Evidence-Based Policymaking (CEP) to explore how to increase the availability and use of evidence in the Federal government while protecting privacy and confidentiality. In the September 7, 2017 report on its findings, the CEP provided a series of recommendations in response to its charge. As part of its findings, the CEP highlighted the heterogeneity in application processes for confidential data as an important challenge for those seeking to access confidential data from multiple agencies to build evidence. The CEP further noted that “inefficiencies in the [confidential] data access processes create administrative expenses and researcher burdens that can impede Federally-funded research.”<sup>4</sup> Federally-funded research, while not the only type of research that would be supported by the SAP, today represents a large share of data-access demand.

The CEP report directly influenced the Evidence Act. Informed by the findings of the CEP<sup>5</sup>, the Evidence Act requires that the Director of OMB establish an SAP that will be adopted by statistical agencies and units and allow agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, to apply to access certain confidential data accessed or acquired by statistical agencies or units.<sup>6</sup> Specifically, the Evidence Act requires that each statistical agency or unit establish an ‘identical’ application process, which includes not just the application form but also the criteria for determining whether to grant an applicant access to the confidential data asset,

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<sup>4</sup> <https://bipartisanpolicy.org/wp-content/uploads/2019/03/Full-Report-The-Promise-of-Evidence-Based-Policymaking-Report-of-the-Commission-on-Evidence-based-Policymaking.pdf>.

<sup>5</sup> H.R. Rep No.115-411 (2017).

<sup>6</sup> 44 U.S.C. 3583(a). Agencies, the Congressional Budget Office, State, local, and Tribal governments may, for the purposes of developing evidence, apply to access confidential data accessed or acquired by statistical agencies and units by applying for an employee(s) of those organizations to be designated as agents to conduct a specific statistical activity.

timeframes for prompt determinations, an appeals process for adverse determinations, and reporting requirements for full transparency. While the adoption of the SAP is required for statistical agencies and units recognized under CIPSEA, it is understood that other agencies and organizational units within the Executive branch may benefit from the adoption of the SAP to accept applications for access to confidential data assets available for the purpose of developing evidence.

In 2019, a subset of statistical agencies and units associated with the Federal Statistical Research Data Centers established a pilot project that provided researchers with a common, online application form and metadata inventory for requesting access to certain confidential data assets ([www.researchdatagov.com](http://www.researchdatagov.com)). Two key lessons learned from the pilot were that the standard application process requires clear policy guidelines and a central capacity to guide implementation and standardization. As the number of participating agencies increases, as well as the complexity of the SAP program itself, a policy that guides decision making and establishes clear roles and responsibilities becomes increasingly important. Based on the pilot experience and subsequent, in 2021 OMB designated the Standard Application Process program as a government-wide shared service and established the role of Program Management Office (PMO) as a managing partner of the program.

In order to provide needed guidance and recommendations, in 2020 the ICSP established a subcommittee on the SAP. The subcommittee sought to build on the earlier pilot project and the lessons learned by engaging in outreach to researchers and data providers likely to use the SAP. Initial feedback from stakeholders had common themes. For example, stakeholders indicated that application processes are often long and cumbersome, that transparency of requirements and timely



approvals are important, and that they would like to see more standardization of processes across agencies.

Guided by the requirements of the Evidence Act and the stakeholder feedback, the ICSP SAP subcommittee drafted a policy for the establishment of an SAP. The draft policy went through multiple rounds of review by ICSP member agencies and units to ensure the requirements align with the requirements of Evidence Act, the additional statutory and regulatory requirements governing certain data assets or statistical agencies and units, and the practical conditions affecting an approved research project's lifecycle. In July 2021, the ICSP voted to send the draft policy to OMB as a recommendation for establishing an SAP consistent with the Evidence Act requirements.

### **Interagency Council on Statistical Policy Recommendation**

OMB seeks comment on this proposal. We have made a preliminary determination that the proposal also meets the requirements of the Evidence Act (44 U.S.C. 3583), and has the potential to reduce the burden to applicants while maintaining currently strong access and confidentiality protections.

In summary, the application process begins with an applicant identifying a confidential data asset for which a statistical agency or unit is accepting applications for the purpose of developing evidence, and ends with the agency or unit's determination whether to grant access to the applicant. In the case of an adverse determination, the application process ends with the conclusion of an appeals process if the applicant elects to appeal the adverse determination. The

scope of this proposal excludes decisions about the mode of access to confidential data or methods by which data are protected from unauthorized disclosure.<sup>7</sup>

The implementation of the proposed SAP would include an online portal that serves as the primary location for researchers and others seeking to identify and apply for access to confidential data available for evidence building purposes.

The SAP Portal would include an SAP Data Inventory and searchable metadata on confidential data assets for which evidence-building applications are being accepted, and would be populated by statistical agencies and units. The goal of the policy is for the metadata to be sufficient to facilitate data identification and ensure that potential applicants can find and access adequate documentation on available data assets. The SAP Portal would also include a common application form that is standardized across statistical agencies and units and datasets, except where unique legal or regulatory requirements create a need for additional fields.

Upon receipt of a completed application, statistical agencies and units would apply a common set of criteria when reviewing both the proposed project and the applicant. When reviewing a proposed project, statistical agencies and units would ensure that the data use is for exclusively statistical purposes; the use is allowed under relevant statutes, regulations, notices, agreements, and other requirements governing the use of the data; that appropriate statistical disclosure limitations could be applied to the relevant data; there is a demonstrated need for the data; the project is feasible; and the public trust can be maintained. When required by statute or regulation, statistical agencies or units may consider additional criteria as appropriate.

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<sup>7</sup> Those decisions fall within the scope of a regulation that OMB will promulgate under 44 U.S.C. 3582.

The proposed policy would establish a set of four authorization levels that define the level of applicant review required. For example, Authorization Level 1 would require evaluation of the applicant's identity and completion of training, Authorization Level 2 would have the additional requirement of a non-disclosure or other agreement(s) to be completed, and Authorization Levels 3 and 4 would require two levels of background investigations. The authorization level required for an applicant would be determined by the data asset and mode of data access requested in the project proposal, and would be listed in the SAP Data Inventory itself. The authorization levels are generally consistent with current practices for given modes of data access. For example, Authorization Level 1 would be consistent with the level of access that is usually associated with indirect access to confidential data using a secure web-based query system and Authorization Level 4 would be consistent with practices at the Federal Statistical Research Data Centers.

The timeline for review of applications would be standardized across statistical agencies and units under the proposal. For applications involving a single agency it is proposed that review of project should occur within twelve (12) weeks, and for applications involving requests for data access from multiple agencies the review should occur within twenty-four (24) weeks to allow for the additional complexity and coordination. Agencies who cannot meet the required timing would be able to seek an extension when appropriate. Requests that require the statistical agency or unit to obtain approval from entities not subject to the proposed policy are not subject to the timeframes. Under the proposal, review of applicants should occur no later than three (3) weeks after a project receives approval, unless the review requires a new background investigation.

Upon receipt of an adverse determination, it is proposed that applicants have the opportunity to appeal the decision to a review body within the statistical agency or unit, when the grounds for the adverse determination are under the control of the relevant statistical agencies or units. The result of the appeals process would be communicated with the applicant within eight (8) weeks of the appeal request submission. Under the proposal applicants would also have the opportunity to file an appeal of alleged noncompliance with the policy directly with the Chief Statistician at OMB, who would review the allegation and, if appropriate, take steps to facilitate compliance with the policy.<sup>8</sup>

The SAP Portal will provide applicants with up-to-date tracking of applications throughout the review process. The SAP Portal will also provide public reporting of key information with regard to the operation of the SAP, such as the review status and final determination for every project, as required by the Evidence Act.

The full text of the ICSP policy recommendation may be found in the docket (OMB-2022-0001).

### **Desired Focus of Comments**

OMB is particularly interested in receiving comments on the specific areas of interest described below. To provide the most useful feedback, responders should read the SAP policy draft before addressing the posed questions. We also recommend that responses be concise, include citations if summarizing or depending on published work, and provide any links to related research. In addition, a fuller consideration of comments would be facilitated by clear

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<sup>8</sup> The proposal describes a procedural appeal, which would not extend to review of the substantive decision.

identification of the question(s) being addressed. Each question provides a link to the related discussion within the policy draft. The full text of the ISCP SAP policy recommendations is available as a supplemental document on [www.regulations.gov](http://www.regulations.gov) in docket number “OMB-2022-0001”.

OMB welcomes comment on any and all aspects of this policy. We have also identified specific areas of interest for comment, including:

Metadata standards:

- To provide flexibility over time, the proposed policy would require the SAP Program Management Office (PMO) to develop and maintain a set of metadata standards subject to approval by the SAP Governance Body.
  1. Should key metadata elements be considered as part of the policy?  
If so, which?
  2. What are the key metadata elements that the PMO should consider in its development of the metadata standards?
  3. Would it be valuable for the metadata standards to comply with any other existing metadata standards? If so, which?

Application windows:

- The proposed policy would allow each individual statistical agency or unit to establish their own time window during which applications will be accepted for a given data asset as a way to manage resource constraints. This approach is designed to maximize services from higher capacity statistical agencies, which have resources to keep an application window open all year in many cases, but at the potential expense of standardization across statistical agencies, because some lower capacity statistical

agencies may not have the resources to review applications on a constant flow basis.

4. How could this proposed approach be improved, if at all?
- If instead the policy were to require all agencies to align to a common fixed-length window, we believe that has the potential to lead to a decrease in availability for higher capacity agencies.
5. How could this policy be implemented in a way that maximizes its usefulness? How could the following aspects help:
    - i. Frequency of windows for accepting applications (e.g., annual, quarterly)?
    - ii. Minimum number of days for accepting applications (e.g., 60 days) for each window?
    - iii. Alignment of acceptance windows across statistical agencies or products?
    - iv. Any other features to assist applicants seeking data from multiple statistical agencies for a single project?

#### Applicant evaluation:

- The proposed policy would introduce four standardized authorization levels and four standard review criteria against which applicant(s) will be evaluated. The authorization levels are designed to align generally with currently used access modes as described above. They will also need to align with accessibility levels to be defined in an upcoming OMB regulation required under 44 U.S.C. 3582. The standard review criteria would respond to the requirement for an explicit, consistent, and identical review process.

6. Is the proposal an appropriate framework, and should it differ in any manner between Federal and non-Federal applicants? If not, what additional levels or criteria should guide the applicant review process to improve the efficiency of the SAP?

Appeals process:

- The proposed policy would provide applicants the ability to file an appeal in the event their application receives a negative disposition. Under this process, the appeal is reviewed by three officials at the statistical agency or unit, including the statistical agency or unit head or delegate, and a consensus decision is required to reverse the original determination.
7. What additional aspects should be considered to ensure that the process is fair, equitable, and transparent?
  8. How, if at all, should processes vary for applications that would use data from multiple agencies?

Public reporting:

- The Evidence Act (44 U.S.C. 3583(a)(6)) requires public reporting on the status and disposition of each application to promote transparency.
9. What additional information should be considered as part of the proposed public reporting requirements beyond what the proposal suggests?

In addition, OMB welcomes more general comment on the merit of the proposed SAP both in technical terms and as statistical policy, including whether any

elements should be modified in support of technical improvement or to improve statistical policy. The technical implications of the proposed SAP involve the feasibility, cost, and effectiveness of its structure and processes. The statistical policy implications relate to how well the proposed SAP supports the missions of

statistical agencies and units by serving the information and research needs of policymakers and the public, while protecting the privacy and confidentiality of individuals who provide data.

AUTHORITY: 44 U.S.C. 3583.

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